

This letter discusses methods of paying Service Occupation Tax by registered de minimis servicemen. See 86 Ill. Adm. Code 140.101. (This is a GIL).

February 23, 2001

Dear Xxxxx:

This letter is in response to your letter dated February 1, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Please provide clarification of the following issue:

An Illinois registered de minimis service provider (the primary serviceman) purchases services from another Illinois registered de minimis service provider (the secondary serviceman). Is the primary serviceman required to self-assess use tax, considering that the secondary serviceman has already paid sales or use tax on its purchase of tangible personal property transferred incident to the sale of service to the primary serviceman? Previous General Information Letters are not quite clear on the subject, typically stating:

If primary servicemen are registered and de minimis, they may choose to remit Service Occupation Tax to the Department based upon their cost price of tangible personal property purchased from secondary servicemen. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Primary servicemen provide the secondary servicemen with Certificates of Resale if the secondary servicemen are registered, and collect Service Use Tax from customers on their cost price. (ST 99-0094-GIL)

The only other time a situation such as the above is addressed is when an unregistered de minimis serviceman purchase services from another unregistered de minimis serviceman (35 ILCS 110/2 and 115/2).

If you have any questions regarding this request, please contact me.

Under the Service Occupation Tax Act, servicemen have four ways to calculate their tax base: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de

minimis and are no otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen may use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way that registered de minimis servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers and collect Service Use Tax from customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. These servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. These servicemen are also not liable for Service Occupation Tax.

You have inquired about transactions wherein a secondary registered de minimis serviceman transfers tangible personal property to a primary registered de minimis serviceman incident to a sale of service. As noted above, registered de minimis servicemen may provide suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Therefore, the secondary serviceman can purchase the tangible personal property that he transfers to the primary serviceman tax free as a purchase for resale. Likewise, the primary serviceman can purchase the tangible personal property transferred incident to his purchase of service from the secondary serviceman tax free as a purchase for resale. When the primary serviceman transfers the tangible personal property to his customer incident to the sale of service, he must then calculate his service occupation tax by one of the first three methods listed above.

Your letter talks of a registered serviceman self-assessing Use Tax. Servicemen opting for the final method described above are generally not registered with the Department. Subsection 2(g) of the Service Occupation Tax Act, 35 ILCS 115/2(g) provides that if a primary serviceman, who has elected the final method described above, subcontracts service work to a secondary serviceman who has elected the final method described above, the primary serviceman does not incur a Use Tax

liability if the secondary serviceman has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and certifies that fact in writing to the primary serviceman.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.